
HOUSE BILL No. 1057

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-5-12; IC 12-7-2-178.8; IC 12-24-2-8; IC 16-18-2; IC 16-41-37.

Synopsis: Smoking ban in certain public places. Prohibits smoking in: (1) public places; (2) enclosed areas of a place of employment; and (3) certain state vehicles. Provides exemptions. Requires the alcohol and tobacco commission to enforce the prohibition. Makes it a Class B infraction to violate the smoking prohibition and a Class A infraction if the person has three unrelated prior offenses. Repeals the current clean indoor air law that prohibits smoking in public buildings. (The introduced version of this bill was prepared by the health finance commission.)

Effective: July 1, 2008.

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January 8, 2008, read first time and referred to Committee on Public Policy.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE BILL No. 1057

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-5-12 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]:

4 **Chapter 12. Prohibition on Smoking**

5 **Sec. 1. As used in this chapter, "public place" means an enclosed**
6 **area in which the public is invited or permitted.**

7 **Sec. 2. As used in this chapter, "smoking" means the carrying**
8 **or holding of a lighted cigarette, cigar, pipe, or any other lighted**
9 **smoking equipment, or the inhalation or exhalation of smoke from**
10 **lighted smoking equipment.**

11 **Sec. 3. (a) Except as provided in section 4 of this chapter,**
12 **smoking is prohibited in the following:**

13 (1) A public place.

14 (2) Enclosed areas of a place of employment.

15 (3) A vehicle owned, leased, or operated by the state if the
16 vehicle is being used for a governmental function.

17 (b) An employer shall inform each of the employer's employees

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1 and prospective employees of the smoking prohibition in the place
2 of employment.

3 (c) An owner, an operator, a manager, or other individual with
4 authority shall remove ashtrays or other smoking paraphernalia
5 from areas where smoking is prohibited under this chapter.

6 Sec. 4. (a) This chapter does not apply to the following:

7 (1) A private residence, unless services for which a license is
8 required under IC 12, IC 16, or IC 25 are provided in the
9 residence.

10 (2) A family owned and operated business:

11 (A) that does not allow public access; and

12 (B) in which all the employees are related to the owner of
13 the business.

14 (3) A hotel or motel room that is rented to a guest as a
15 designated smoking room if not more than twenty percent
16 (20%) of the rooms that are rented to guests have a smoking
17 designation.

18 (4) A retail store:

19 (A) at least sixty-six percent (66%) of the business of which
20 is the sale of tobacco products; and

21 (B) that:

22 (i) does not have a license for the consumption of meals
23 or alcohol on the premises; or

24 (ii) is not operated in conjunction with a business that is
25 licensed for the on-premises consumption of meals or
26 alcoholic beverages.

27 This subdivision does not include a tobacco department of a
28 grocery store, drug store, department store, or discount store.

29 (5) A private or semiprivate room of a health facility or other
30 long term care facility if the room is occupied by an individual
31 who has requested in writing to be placed in a room where
32 smoking is permitted.

33 (6) A vehicle (other than a vehicle owned, leased, or operated
34 by the state and being used for a governmental function) used
35 by an employee while in the service of an employer when the
36 employee is the sole occupant of the vehicle.

37 (7) A business that:

38 (A) offers alcoholic beverages for sale to customers for
39 consumption on the licensed premises under a retailer's
40 permit issued under this title;

41 (B) does not admit customers or hire employees that are
42 less than twenty-one (21) years of age; and

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(C) generates at least ten percent (10%) of its total annual gross income from the onsite sale of tobacco products during a calendar year.

(8) A bar or tavern that:

- (A) holds a retailer's permit issued under this title;
- (B) does not allow individuals who are less than eighteen (18) years of age to enter the premises;
- (C) does not employ an individual who is less than eighteen (18) years of age;
- (D) is not physically located within a business that is otherwise prohibited from allowing smoking under this chapter; and
- (E) provides written notice to the commission, in the manner and before a date prescribed by the commission, that the establishment:
 - (i) intends to allow smoking on the premises; and
 - (ii) meets the requirements of this subdivision.

(9) A business that:

- (A) is exempt from federal income taxation under Section 501(c) of the Internal Revenue Code;
- (B) is a club or a fraternal club;
- (C) holds a retailer's permit issued under this title; and
- (D) provides food or alcoholic beverages only to a member of the club or the guest of a member of the club.

(10) A bowling alley.

(11) A live pari-mutuel horse racing facility licensed under IC 4-31-5.

(12) A satellite facility licensed under IC 4-31-5.5.

(13) A riverboat (as defined by IC 4-33-2-17).

(14) A slot machine facility licensed under IC 4-35.

(b) An establishment exempted under this section that allows smoking on the premises shall conspicuously post a sign at every entrance that states: "Warning: This is a smoking establishment."

Sec. 5. The commission shall enforce this chapter. The commission may inspect premises that are subject to this chapter to ensure that the person responsible for the premises is in compliance with this chapter.

Sec. 6. (a) The official in charge of a public place shall do the following:

- (1) Post conspicuous signs that read "Smoking Is Prohibited By State Law" or other similar language.**
- (2) Request an individual who is smoking in violation of this**

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chapter to refrain from smoking.

(3) Remove an individual who is smoking in violation of this chapter and fails to refrain from smoking after being requested to do so.

(b) The proprietor of a restaurant shall post conspicuous signs at each entrance to the restaurant, informing the public of the establishment's smoking policy.

Sec. 7. A person who smokes in an area where smoking is prohibited by this chapter commits prohibited smoking, a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation of this chapter.

Sec. 8. An owner, manager, or operator of a public place or place of employment that fails to comply with this chapter commits a Class B infraction. However, the violation is a Class A infraction if the person has at least three (3) prior unrelated judgments for a violation under this chapter.

Sec. 9. This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.

SECTION 2. IC 12-7-2-178.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 178.8. "Smoking", for purposes of IC 12-24-2-8, has the meaning set forth in ~~IC 16-41-37-3~~. **IC 7.1-5-12-2.**

SECTION 3. IC 12-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) Notwithstanding IC 12-27-3-3, the superintendent of a state institution has complete authority to regulate smoking (as defined in ~~IC 16-41-37-3~~) **IC 7.1-5-12-2**) within the state institution.

(b) A physician licensed under IC 25-22.5 may prescribe nicotine as is medically necessary for a resident of a state institution.

SECTION 4. IC 16-18-2-10, AS AMENDED BY P.L.101-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) "Agency", for purposes of IC 16-23.5, has the meaning set forth in IC 16-23.5-1-2.

(b) "Agency", for purposes of IC 16-40-5, has the meaning set forth in IC 16-40-5-1.

(c) "Agency", for purposes of ~~IC 16-41-37, has the meaning set forth in IC 16-41-37-1.~~

SECTION 5. IC 16-41-37-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. A person who smokes

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1 (1) in a public building, except in an area designated as a smoking
 2 area under section 5 of this chapter;
 3 (2) in the retail area of a grocery store or drug store that is
 4 designated as a nonsmoking area by the store's proprietor;
 5 (3) in the dining area of a restaurant that is designated and posted
 6 as the restaurant's nonsmoking area by the restaurant's proprietor;
 7 or
 8 (4) in a school bus during a school week or while the school bus
 9 is being used for a purpose described in section 2.3(3) of this
 10 chapter
 11 commits a Class B infraction. However, the violation is a Class A
 12 infraction if the person has at least three (3) previous unrelated
 13 judgments for violating this section that are accrued within the twelve
 14 (12) months immediately preceding the violation.
 15 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE
 16 JULY 1, 2008]: IC 16-18-2-298; IC 16-18-2-332; IC 16-41-37-1;
 17 IC 16-41-37-2; IC 16-41-37-3; IC 16-41-37-5; IC 16-41-37-6;
 18 IC 16-41-37-7; IC 16-41-37-8.

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